

authorized, with the approval of the Secretary to adopt a land consolidation plan providing for the sale or exchange of any tribal lands or interest in lands for the purpose of eliminating undivided fractional interests in Indian trust or restricted lands or consolidating its tribal landholdings: *Provided, That—*

(1) except as provided by subsection (c), the sale price or exchange value received by the tribe for land or interests in land covered by this section shall be no less than within 10 percentum of the fair market value as determined by the Secretary;

(2) if the tribal land involved in an exchange is of greater or lesser value than the land for which it is being exchanged, the tribe may accept or give cash in such exchange in order to equalize the values of the property exchanged;

(3) any proceeds from the sale of land or interests in land or proceeds received by the tribe to equalize an exchange made pursuant to this section shall be used exclusively for the purchase of other land or interests in land;

(4) the Secretary shall maintain a separate trust account for each tribe selling or exchanging land pursuant to this section consisting of the proceeds of the land sales and exchanges and shall release such funds only for the purpose of buying lands under this section; and

(5) any tribe may retain the mineral rights to such sold or exchanged lands and the Secretary shall assist such tribe in determining the value of such mineral rights and shall take such value into consideration in determining the fair market value of such lands.

(b) Conveyancing requirement; specific findings for nonexecution

The Secretary must execute such instrument of conveyance needed to effectuate a sale or exchange of tribal lands made pursuant to an approved tribal land consolidation plan unless he makes a specific finding that such sale or exchange is not in the best interest of the tribe or is not in compliance with the tribal land consolidation plan.

(c) Below market value conveyance of Cherokee Nation of Oklahoma homesites

The Secretary may execute instruments of conveyance for less than fair market value to effectuate the transfer of lands used as homesites held, on December 17, 1991, by the United States in trust for the Cherokee Nation of Oklahoma. Only the lands used as homesites, and described in the land consolidation plan of the Cherokee Nation of Oklahoma approved by the Secretary on February 6, 1987, shall be subject to this subsection.

(Pub. L. 97-459, title II, §204, Jan. 12, 1983, 96 Stat. 2517; Pub. L. 98-608, §1(1), Oct. 30, 1984, 98 Stat. 3171; Pub. L. 102-238, §3, Dec. 17, 1991, 105 Stat. 1908.)

Editorial Notes

AMENDMENTS

1991—Subsec. (a)(1). Pub. L. 102-238, §3(1), substituted “(1) except as provided by subsection (c), the sale price” for “(1) the sale price”.

Subsec. (c). Pub. L. 102-238, §3(2), added subsec. (c).

1984—Subsec. (a). Pub. L. 98-608 amended subsec. (a) generally, substituting “: *Provided, That—*” for period at end and inserting five numbered pars., thereby correcting errors originally contained in this section as enacted by Pub. L. 97-459, the text of which had a portion of section 204 appearing in section 206 (classified to section 2205 of this title) as the result of inadvertent error in the execution of committee amendments (see House Report No. 97-908, Sept. 30, 1982) to the bill. Pub. L. 97-459 enacted subsec. (a) as ending with “tribal landholdings.”, and included portion of section 204 containing proviso and five numbered pars. within text of section 206.

Subsec. (b). Pub. L. 98-608 included subsec. (b) within this section and substituted a period for the dash after “tribal land consolidation plan”, thereby correcting errors originally contained in this section as enacted by Pub. L. 97-459, which, as the result of inadvertent error in the execution of committee amendments (see House Report No. 97-908, Sept. 30, 1982) to the bill, enacted subsec. (b) as part of section 206(b) of Pub. L. 97-459 and ended it with “tribal land consolidation plan—”.

§ 2204. Purchase of trust or restricted or controlled lands at no less than fair market value; requisite conditions

(a) Purchase of land

(1) In general

Subject to subsection (b), any Indian tribe may purchase, at not less than fair market value and with the consent of the owners of the interests, part or all of the interests in—

(A) any tract of trust or restricted land within the boundaries of the reservation of the tribe; or

(B) land that is otherwise subject to the jurisdiction of the tribe.

(2) Required consent

(A) In general

The Indian tribe may purchase all interests in a tract described in paragraph (1) with the consent of the owners of undivided interests equal to at least 50 percent of the undivided interest in the tract.

(B) Interest owned by tribe

Interests owned by an Indian tribe in a tract may be included in the computation of the percentage of ownership of the undivided interests in that tract for purposes of determining whether the consent requirement under subparagraph (A) has been met.

(b) Conditions applicable to purchase

Subsection (a) applies on the condition that—

(1) any Indian owning any undivided interest, and in actual use and possession of such tract for at least three years preceding the tribal initiative, may purchase such tract by matching the tribal offer;

(2) if at any time within five years following the date of acquisition of such land by an individual pursuant to this section, such property is offered for sale or a petition is filed with the Secretary for removal of the property from trust or restricted status, the tribe shall have 180 days from the date it is notified of such offer or petition to acquire such property by paying to the owner the fair market value as determined by the Secretary; and

(3) the approval of the Secretary shall be required for a land sale initiated under this sec-

tion, except that such approval shall not be required with respect to a land sale transaction initiated by an Indian tribe that has in effect a land consolidation plan that has been approved by the Secretary under section 2203 of this title.

(c) Partition of highly fractionated Indian lands

(1) Applicability

This subsection shall be applicable only to parcels of land (including surface and subsurface interests, except with respect to a subsurface interest that has been severed from the surface interest, in which case this subsection shall apply only to the surface interest) which the Secretary has determined, pursuant to paragraph (2)(B),¹ to be parcels of highly fractionated Indian land.

(2) Requirements

Each partition action under this subsection shall be conducted by the Secretary in accordance with the following requirements:

(A) Application

Upon receipt of any payment or bond required under subparagraph (B), the Secretary shall commence a process for partitioning a parcel of land by sale in accordance with the provisions of this subsection upon receipt of an application by—

- (i) the Indian tribe with jurisdiction over the subject land that owns an undivided interest in the parcel of land; or
- (ii) any person owning an undivided interest in the parcel of land who is eligible to bid at the sale of the parcel pursuant to subclause (II), (III), or (IV) of subparagraph (I)(i);

provided that no such application shall be valid or considered if it is received by the Secretary prior to the date that is 1 year after the date on which notice is published pursuant to section 8(a)(4) of the American Indian Probate Reform Act of 2004.

(B) Costs of serving notice and publication

The costs of serving and publishing notice under subparagraph (F) shall be borne by the applicant. Upon receiving written notice from the Secretary, the applicant must pay to the Secretary an amount determined by the Secretary to be the estimated costs of such service of notice and publication, or furnish a sufficient bond for such estimated costs within the time stated in the notice, failing which, unless an extension is granted by the Secretary, the Secretary shall not be required to commence the partition process under subparagraph (A) and may deny the application. The Secretary shall have the discretion and authority in any case to waive either the payment or the bond (or any portion of such payment or bond) otherwise required by this subparagraph, upon making a determination that such waiver will further the policies of this chapter.

(C) Determination

Upon receipt of an application pursuant to subparagraph (A), the Secretary shall deter-

mine whether the subject parcel meets the requirements set forth in section 2201(6) of this title to be classified as a parcel of highly fractionated Indian land.

(D) Consent requirements

(i) In general

A parcel of land may be partitioned under this subsection only if the applicant obtains the written consent of—

(I) the Indian tribe with jurisdiction over the subject land if such Indian tribe owns an undivided interest in the parcel;

(II) any owner who, for the 3-year period immediately preceding the date on which the Secretary receives the application, has

(aa) continuously maintained a bona fide residence on the parcel; or

(bb) operated a bona fide farm, ranch, or other business on the parcel; and

(III) the owners (including parents of minor owners and legal guardians of incompetent owners) of at least 50 percent of the undivided interests in the parcel, but only in cases where the Secretary determines that, based on the final appraisal prepared pursuant to subparagraph (F), any 1 owner's total undivided interest in the parcel (not including the interest of an Indian tribe or that of the owner requesting the partition) has a value in excess of \$1,500.

Any consent required by this clause must be in writing and acknowledged before a notary public (or other official authorized to make acknowledgments), and shall be approved by the Secretary unless the Secretary has reason to believe that the consent was obtained as a result of fraud or undue influence.

(ii) Consent by the Secretary on behalf of certain individuals

For the purposes of clause (i)(III), the Secretary may consent on behalf of—

(I) undetermined heirs of trust or restricted interests and owners of such interests who are minors and legal incompetents having no parents or legal guardian; and

(II) missing owners or owners of trust or restricted interests whose whereabouts are unknown, but only after a search for such owners has been completed in accordance with the provisions of this subsection.

(E) Appraisal

After the Secretary has determined that the subject parcel is a parcel of highly fractionated Indian land pursuant to subparagraph (C), the Secretary shall cause to be made, in accordance with the provisions of this chapter for establishing fair market value, an appraisal of the fair market value of the subject parcel.

(F) Notice to owners on completion of appraisal

Upon completion of the appraisal, the Secretary shall give notice of the requested par-

¹ So in original. Probably should be paragraph "(2)(C)".

tition and appraisal to all owners of undivided interests in the parcel, in accordance with principles of due process. Such notice shall include the following requirements:

(i) Written notice

The Secretary shall attempt to give each owner written notice of the partition action stating the following:

(I) That a proceeding to partition the parcel of land by sale has been commenced.

(II) The legal description of the subject parcel.

(III) The owner's ownership interest in the subject parcel as evidenced by the Secretary's records as of the date that owners are determined in accordance with clause (ii).

(IV) The results of the appraisal.

(V) The owner's right to receive a copy of the appraisal upon written request.

(VI) The owner's right to comment on or object to the proposed partition and the appraisal.

(VII) That the owner must timely comment on or object in writing to the proposed partition or the appraisal, in order to receive notice of approval of the appraisal and right to appeal.

(VIII) The date by which the owner's written comments or objections must be received, which shall not be less than 90 days after the date that the notice is mailed under this clause or last published under clause (ii)(II).

(IX) The address for requesting copies of the appraisal and for submitting written comments or objections.

(X) The name and telephone number of the official to be contacted for purposes of obtaining information regarding the proceeding, including the time and date of the auction of the land or the date for submitting sealed bids.

(XI) Any other information the Secretary deems to be appropriate.

(ii) Manner of service

(I) Service by certified mail

The Secretary shall use due diligence to provide all owners of interests in the subject parcel, as evidenced by the Secretary's records at the time of the determination under subparagraph (C), with actual notice of the partition proceedings by mailing a copy of the written notice described in clause (i) by certified mail, restricted delivery, to each such owner at the owner's last known address. For purposes of this subsection, owners shall be determined from the Secretary's land title records as of the date of the determination under subparagraph (C) or a date that is not more than 90 days prior to the date of mailing under this clause, whichever is later. In the event the written notice to an owner is returned undelivered, the Secretary shall attempt to obtain a current address for such owner by conducting a reason-

able search (including a reasonable search of records maintained by local, State, Federal and tribal governments and agencies) and by inquiring with the Indian tribe with jurisdiction over the subject parcel, and, if different from that tribe, the Indian tribe of which the owner is a member, and, if successful in locating any such owner, send written notice by certified mail in accordance with this subclause.

(II) Notice by publication

The Secretary shall give notice by publication of the partition proceedings to all owners that the Secretary was unable to serve pursuant to subclause (I), and to unknown heirs and assigns by—

(aa) publishing the notice described in clause (i) at least 2 times in a newspaper of general circulation in the county or counties where the subject parcel of land is located or, if there is an Indian tribe with jurisdiction over the parcel of land and that tribe publishes a tribal newspaper or newsletter at least once every month, 1 time in such newspaper of general circulation and 1 time in such tribal newspaper or newsletter;

(bb) posting such notice in a conspicuous place in the tribal headquarters or administration building (or such other tribal building determined by the Secretary to be most appropriate for giving public notice) of the Indian tribe with jurisdiction over the parcel of land, if any; and

(cc) in addition to the foregoing, in the Secretary's discretion, publishing notice in any other place or means that the Secretary determines to be appropriate.

(G) Review of comments on appraisal

(i) In general

After reviewing and considering comments or information timely submitted by any owner of an interest in the parcel in response to the notice required under subparagraph (F), the Secretary may, consistent with the provisions of this chapter for establishing fair market value—

(I) order a new appraisal; or

(II) approve the appraisal;

provided that if the Secretary orders a new appraisal under subclause (I), notice of the new appraisal shall be given as specified in clause (ii).

(ii) Notice

Notice shall be given—

(I) in accordance with subparagraph (H), where the new appraisal results in a value of the land that is equal to or greater than that of the earlier appraisal; or

(II) in accordance with subparagraph (F)(ii), where the new appraisal results in a lower valuation of the land.

(H) Notice to owners of approval of appraisal and right to appeal

Upon making the determination under subparagraph (G), the Secretary shall provide to the Indian tribe with jurisdiction over the subject land and to all persons who submitted written comments on or objections to the proposed partition or appraisal, a written notice to be served on such tribe and persons by certified mail. Such notice shall state—

- (i) the results of the appraisal;
- (ii) that the owner has the right to review a copy of the appraisal upon request;
- (iii) that the land will be sold for not less than the appraised value, subject to the consent requirements under paragraph (2)(D);
- (iv) the time of the sale or for submitting bids under subparagraph (I);
- (v) that the owner has the right, under the Secretary's regulations governing administrative appeals, to pursue an administrative appeal from—

(I) the determination that the land may be partitioned by sale under the provisions of this section; and

(II) the Secretary's order approving the appraisal;

(vi) the date by which an administrative appeal must be taken, a citation to the provisions of the Secretary's regulations that will govern the owner's appeal, and any other information required by such regulations to be given to parties affected by adverse decisions of the Secretary;

(vii) in cases where the Secretary determines that any person's undivided trust or restricted interest in the parcel exceeds \$1,500 pursuant to paragraph (2)(D)(iii), that the Secretary has authority to consent to the partition on behalf of undetermined heirs of trust or restricted interests in the parcel and owners of such interests whose whereabouts are unknown; and

(viii) any other information the Secretary deems to be appropriate.

(I) Sale to eligible purchaser

(i) In general

Subject to clauses (ii) and (iii) and the consent requirements of paragraph (2)(D), the Secretary shall, after providing notice to owners under subparagraph (H), including the time and place of sale or for receiving sealed bids, at public auction or by sealed bid (whichever of such methods of sale the Secretary determines to be more appropriate under the circumstances) sell the parcel of land by competitive bid for not less than the final appraised fair market value to the highest bidder from among the following eligible bidders:

(I) The Indian tribe, if any, with jurisdiction over the trust or restricted interests in the parcel being sold.

(II) Any person who is a member, or is eligible to be a member, of the Indian tribe described in subclause (I).

(III) Any person who is a member, or is eligible to be a member, of an Indian

tribe but not of the tribe described in subclause (I), but only if such person already owns an undivided interest in the parcel at the time of sale.

(IV) Any lineal descendent of the original allottee of the parcel who is a member or is eligible to be a member of an Indian tribe or, with respect to a parcel located in the State of California that is not within an Indian tribe's reservation or not otherwise subject to the jurisdiction of an Indian tribe, who is a member, or eligible to be a member, of an Indian tribe or owns a trust or restricted interest in the parcel.

(ii) Right to match highest bid

If the highest bidder is a person who is only eligible to bid under clause (i)(III), the Indian tribe that has jurisdiction over the parcel, if any, shall have the right to match the highest bid and acquire the parcel, but only if—

(I) prior to the date of the sale, the governing body of such tribe has adopted a tribal law or resolution reserving its right to match the bids of such non-member bidders in partition sales under this subsection and delivered a copy of such law or resolution to the Secretary; and

(II) the parcel is not acquired under clause (iii).

(iii) Right to purchase

Any person who is a member, or eligible to be a member, of the Indian tribe with jurisdiction over the trust or restricted interests in the parcel being sold and is, as of the time of sale under this subparagraph, the owner of the largest undivided interest in the parcel shall have a right to purchase the parcel by tendering to the Secretary an amount equal to the highest sufficient bid submitted at the sale, less that amount of the bid attributable to such owner's share, but only if—

(I) the owner submitted a sufficient bid at the sale;

(II) the owner's total undivided interest in the parcel immediately prior to the sale was—

(aa) greater than the undivided interest held by any other co-owners, except where there are 2 or more co-owners whose interests are of equal size but larger than the interests of all other co-owners and such owners of the largest interests have agreed in writing that 1 of them may exercise the right of purchase under this clause; and

(bb) equal to or greater than 20 percent of the entire undivided ownership of the parcel;

(III) within 3 days following the date of the auction or for receiving sealed bids, and in accordance with the regulations adopted to implement this section (if any), the owner delivers to the Secretary a written notice of intent to exercise the owner's rights under this clause; and

(IV) such owner tenders the amount of the purchase price required under this clause—

(aa) not more than 30 days after the date of the auction or time for receiving sealed bids; and

(bb) in accordance with any requirements of the regulations promulgated under paragraph (5).

(iv) Interest acquired

A purchaser of a parcel of land under this subparagraph shall acquire title to the parcel in trust or restricted status, free and clear of any and all claims of title or ownership of all persons or entities (not including the United States) owning or claiming to own an interest in such parcel prior to the time of sale.

(J) Proceeds of sale

(i) Subject to clauses (ii) and (iii), the Secretary shall distribute the proceeds of sale of a parcel of land under the provisions of this section to the owners of interests in such parcel in proportion to their respective ownership interests.

(ii) Proceeds attributable to the sale of trust or restricted interests shall be maintained in accounts as trust personalty.

(iii) Proceeds attributable to the sale of interests of owners whose whereabouts are unknown, of undetermined heirs, and of other persons whose ownership interests have not been recorded shall be held by the Secretary until such owners, heirs, or other persons have been determined, at which time such proceeds shall be distributed in accordance with clauses (i) and (ii).

(K) Lack of bids or consent

(i) Lack of bids

If no bidder described in subparagraph (I) presents a bid that equals or exceeds the final appraised value, the Secretary may either—

(I) purchase the parcel of land for its appraised fair market value on behalf of the Indian tribe with jurisdiction over the land, subject to the lien and procedures provided under section 2213(b) of this title; or

(II) terminate the partition process.

(ii) Lack of consent

If an applicant fails to obtain any applicable consent required under the provisions of subparagraph (D) by the date established by the Secretary prior to the proposed sale, the Secretary may either extend the time for obtaining any such consent or deny the request for partition.

(3) Enforcement

(A) In general

If a partition is approved under this subsection and an owner of an interest in the parcel of land refuses to surrender possession in accordance with the partition decision, or refuses to execute any conveyance necessary to implement the partition, then any affected owner or the United States may—

(i) commence a civil action in the United States district court for the district in which the parcel of land is located; and

(ii) request that the court issue an order for ejectment or any other appropriate remedy necessary for the partition of the land by sale.

(B) Federal role

With respect to any civil action brought under subparagraph (A)—

(i) the United States—

(I) shall receive notice of the civil action; and

(II) may be a party to the civil action; and

(ii) the civil action shall not be dismissed, and no relief requested shall be denied, on the ground that the civil action is against the United States or that the United States is a necessary and indispensable party.

(4) Grants and loans

The Secretary may provide grants and low interest loans to successful bidders at sales authorized by this subsection, provided that—

(A) the total amount of such assistance in any such sale shall not exceed 20 percent of the appraised value of the parcel of land sold; and

(B) the grant or loan funds provided shall only be applied toward the purchase price of the parcel of land sold.

(5) Regulations

The Secretary is authorized to adopt such regulations as may be necessary to implement the provisions of this subsection. Such regulations may include provisions for giving notice of sales to prospective purchasers eligible to submit bids at sales conducted under paragraph (2)(I).

(Pub. L. 97-459, title II, §205, Jan. 12, 1983, 96 Stat. 2517; Pub. L. 98-608, §1(2), Oct. 30, 1984, 98 Stat. 3171; Pub. L. 106-462, title I, §103(2), Nov. 7, 2000, 114 Stat. 1993; Pub. L. 108-374, §§4, 6(a)(1), Oct. 27, 2004, 118 Stat. 1787, 1797; Pub. L. 109-157, §§2, 8(a)(1), Dec. 30, 2005, 119 Stat. 2949, 2952; Pub. L. 110-453, title II, §207(b), Dec. 2, 2008, 122 Stat. 5030.)

Editorial Notes

REFERENCES IN TEXT

Section 8(a)(4) of the American Indian Probate Reform Act of 2004, referred to in subsec. (c)(2)(A), is section 8(a)(4) of Pub. L. 108-374, which is set out as a note under section 2201 of this title.

This chapter, referred to in subsec. (c)(2)(B), (E), (G)(i), was in the original “this Act”, which was translated as reading “this title”, meaning title II of Pub. L. 97-459, to reflect the probable intent of Congress.

AMENDMENTS

2008—Subsec. (c)(2)(D)(i). Pub. L. 110-453 substituted “by the Secretary” for “by Secretary” in concluding provisions.

2005—Subsec. (a). Pub. L. 109-157, §2(1), added subsec. (a) and struck out heading and text of former subsec. (a). Text read as follows: “Subject to subsection (b) of this section, any Indian tribe may purchase at no less than the fair market value part or all of the interests

in any tract of trust or restricted land within that tribe's reservation or otherwise subject to that tribe's jurisdiction with the consent of the owners of such interests. The tribe may purchase all of the interests in such tract with the consent of the owners of undivided interests equal to at least 50 percent of the undivided interest in such tract. Interests owned by an Indian tribe in a tract may be included in the computation of the percentage of ownership of the undivided interests in that tract for purposes of determining whether the consent requirement under the preceding sentence has been met."

Subsec. (c). Pub. L. 109-157, §2(2), redesignated subsec. (d) as (c). Prior to amendment, no subsec. (c) had been enacted.

Subsec. (c)(2)(G)(ii)(I). Pub. L. 109-157, §2(3)(A)(i), substituted "a value of the land that is equal to or greater than that of the earlier appraisal" for "a higher valuation of the land".

Subsec. (c)(2)(I)(iii)(III). Pub. L. 109-157, §2(3)(A)(ii)(I), inserted "(if any)" after "this section".

Subsec. (c)(2)(I)(iii)(IV)(aa). Pub. L. 109-157, §2(3)(A)(ii)(II)(aa), substituted "more" for "less".

Subsec. (c)(2)(I)(iii)(IV)(bb). Pub. L. 109-157, §2(3)(A)(ii)(II)(bb), substituted "under paragraph (5)" for "to implement this section".

Subsec. (c)(5). Pub. L. 109-157, §2(3)(B), in second sentence, substituted "may" for "shall".

Subsec. (d). Pub. L. 109-157, §8(a)(1), amended directory language of Pub. L. 108-374, §4. See 2004 Amendment note below.

Pub. L. 109-157, §2(2), redesignated subsec. (d) as (c). 2004—Subsec. (a). Pub. L. 108-374, §6(a)(1), in second sentence, substituted "undivided interests equal to at least 50 percent of the undivided interest" for "over 50 per centum of the undivided interests".

Subsec. (d). Pub. L. 108-374, §4, as amended by Pub. L. 109-157, §8(a)(1), added subsec. (d).

2001—Pub. L. 106-462, §103(2)(A)(iii), which directed substitution of subsec. (b) designation and heading and "Subsection (a) applies on the condition that—" for "Provided, That—", was executed by making the substitution for "Provided, That—" to reflect the probable intent of Congress and the amendment by Pub. L. 106-462, §103(2)(A)(ii). See below.

Pub. L. 106-462, §103(2)(A)(i), (ii), substituted subsec. (a) designation and heading and "Subject to subsection (b), any Indian" for "Any Indian" and ". Interests owned by an Indian tribe in a tract may be included in the computation of the percentage of ownership of the undivided interests in that tract for purposes of determining whether the consent requirement under the preceding sentence has been met." for the colon before "Provided, That—".

Subsec. (b)(2). Pub. L. 106-462, §103(2)(B)(ii), inserted "and" at end.

Pub. L. 106-462, §103(2)(B)(i), which directed substitution of "if" for "If.", was executed by making the substitution for "if," to reflect the probable intent of Congress.

Subsec. (b)(3). Pub. L. 106-462, §103(2)(C), added par. (3) and struck out former par. (3) which read as follows: "all purchases and sales initiated under this section shall be subject to approval by the Secretary."

1984—Pub. L. 98-608 amended section generally, substituting "the owners of such interests. The tribe may purchase all of the interests in such tract with the consent of the owners of over 50 per centum of the undivided interests in such tract" for "of over 50 per centum of the owners or with the consent of the owners of over 50 per centum of undivided interests in such tract" before proviso.

Par. (1). Pub. L. 98-608 redesignated par. (2) as (1) and inserted "for at least three years preceding the tribal initiative," before "may purchase such tract". Former par. (1), which provided that no such tract shall be acquired by any Indian or tribe over the objections of three or less owners owning 50 per centum or more of the total interest in such tract, was struck out.

Par. (2). Pub. L. 98-608 added par. (2). Former par. (2) redesignated (1).

Pars. (3), (4). Pub. L. 98-608 redesignated par. (4) as (3), and in par. (3), as so redesignated, substituted "subject to approval" for "approved" and struck out former par. (3), which provided that "this section shall not apply to any tract of land owned by less than fifteen persons; and".

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109-157 effective as if included in Pub. L. 108-374, see section 9 of Pub. L. 109-157, set out as a note under section 5107 of this title.

SEVERABILITY

Invalidity of any provision of Pub. L. 108-374 not to affect validity of remaining provisions, except that each of subcls. (II), (III), or (IV) of subsection (c)(2)(I)(i) of this section deemed to be inseverable from the other two, such that invalidity of any one subcl. renders the other two without effect, see section 9 of Pub. L. 108-374, as amended, set out as a note under section 2201 of this title.

§ 2205. Tribal probate codes; acquisitions of fractional interests by tribes

(a) Tribal probate codes

(1) In general

Notwithstanding any other provision of law, any Indian tribe may adopt a tribal probate code to govern descent and distribution of trust or restricted lands that are—

- (A) located within that Indian tribe's reservation; or
- (B) otherwise subject to the jurisdiction of that Indian tribe.

(2) Possible inclusions

A tribal probate code referred to in paragraph (1) may include—

- (A) rules of intestate succession; and
- (B) other tribal probate code provisions that are consistent with Federal law and that promote the policies set forth in section 102 of the Indian Land Consolidation Act Amendments of 2000.

(3) Tribal probate codes

Except as provided in any applicable Federal law, the Secretary shall not approve a tribal probate code, or an amendment to such a code, that prohibits the devise of an interest in trust or restricted land to—

- (A) an Indian lineal descendant of the original allottee; or
- (B) an Indian who is not a member of the Indian tribe with jurisdiction over such an interest;

unless the code provides for—

- (i) the renouncing of interests to eligible devisees in accordance with the code;
- (ii) the opportunity for a devisee who is the spouse or lineal descendant of a testator to reserve a life estate without regard to waste; and
- (iii) payment of fair market value in the manner prescribed under subsection (c)(2).

(b) Secretarial approval

(1) In general

Any tribal probate code enacted under subsection (a), and any amendment to such a trib-